

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board finds the Administrative Law Judge's preliminary hearing Order Denying Compensation should be affirmed.

This preliminary hearing order involves two separate docketed claims. Claimant filed the first Application for Hearing on May 15, 1997, and alleged a February 14, 1996, accident. The second Application for Hearing was filed on April 6, 2000, and later amended on May 3, 2000, to allege a series of accidents from January 15, 2000, through the present.

Respondent has provided claimant with medical treatment for a left knee injury in Docket No. 223,075. The medical records, introduced at the preliminary hearing, show claimant had surgery on his left knee in February of 1996 and also on November 9, 1998. Claimant was returned to regular work after the November 9, 1998, surgery on February 15, 1999, without restrictions. Claimant has included this docketed claim in his request for medical treatment for a low-back injury. But the Appeals Board agrees with the Administrative Law Judge and finds claimant has not presented any evidence to support a claim that he suffered a low-back injury as the result of his February 14, 1996, work-related accident.

In Docket No. 253,814, claimant's Amended Application for Hearing filed May 3, 2000, alleges a date of accident of a series that commences on or about January 15, 2000, to the present. The injury is described as "left toes, foot[,] left knee, leg and low back and all parts of body affected." But claimant's preliminary hearing benefit request is only for medical treatment for a low-back condition.

Claimant testified he was working in January of 2000 in a new residential construction area installing telephone cable in the west part of Topeka, Kansas. On this particular day, the ground was frozen and covered with snow. As he was bringing some cable around a new house, he slipped into a foot and a half deep hole. His left knee collapsed back against the back of the hole, and as he fell, he caught himself with his left arm. At that time, he immediately felt pain in his left knee.

The next day claimant notified his immediate supervisor of the accident. His supervisor told him he could go see a doctor but did not specify a particular doctor. Claimant's left knee continued to worsen, and claimant took some vacation and was off of work hoping the knee would improve. But the knee did not improve. Claimant then sought medical treatment for the knee from his primary care physician, Wayne E. Spencer, M.D. Dr. Spencer referred claimant to orthopedic surgeon Brett E. Wallace, M.D. Dr. Wallace had performed the November 9, 1998, surgery on claimant's left knee.

Dr. Spencer's medical treatment records were introduced into the preliminary hearing record. Those records show that Dr. Spencer took claimant off work on February 3, 2000, until he could see Dr. Wallace on February 16, 2000. Dr. Spencer's off-work slip indicates the reason claimant was taken off work was because of arthritis in his left knee. Dr. Spencer's medical record dated November 11, 1999, indicated claimant was seen for left knee pain, obesity, and chronic low-back pain.

At the time claimant saw Dr. Wallace on February 16, 2000, his complaints were left knee pain and numbness down the back of his leg and across the top of his foot. Dr. Wallace noted claimant had no back pain and no trauma was associated with his complaints. The doctor also noted there was no indication of injury reported and the numbness in claimant's leg came on spontaneously. Dr. Wallace prescribed medication for the left knee pain. He also returned claimant to regular work with a restriction of no crawling or kneeling for two weeks. At the preliminary hearing, claimant, however, testified he had not worked since Dr. Spencer had taken him off of work on February 3, 2000.

After claimant saw Dr. Wallace, claimant testified he started having a lot of pain in his low back. He attributes the pain to the fall at work in January 2000, because he had not done anything else that would have injured his back except the work that he did for the respondent.

Dr. Spencer saw claimant again on April 11, 2000, with left knee pain, obesity, severe back pain, and elevated blood pressure. Claimant underwent an MRI examination of his lumbar spine on April 21, 2000. The MRI examination found degenerating bulging discs with slight central protrusion suggesting some small subligamentous central herniated discs at L3-4, L4-5, and L5-S1.

After the MRI examination, claimant was again seen by Dr. Wallace on April 24, 2000. Claimant related a history to Dr. Wallace of increasing lower back pain and left leg pain occurring about one month after claimant's February 16, 2000, appointment. Dr. Wallace performed a physical examination of claimant and reviewed the MRI findings. His impression was claimant has symptoms suggestive of nerve root impingement although he may just have a very acute case of degenerative disc disease with pain. Claimant was taken off work, although as noted above, claimant testified at the preliminary hearing he had not worked since February 2, 2000. Dr. Wallace ordered claimant to undergo an EMG test of the lower extremities and then a spine epidural would be considered.

The medical treatment records introduced into the evidence, and claimant's own testimony do not indicate that claimant had any low-back complaints from the alleged January 2000 work-related accident until some time in March or April 2000. The medical treatment records from both of claimant's treating physicians, Dr. Spencer and Dr. Wallace, do not include any notation that claimant gave either of these physicians a history of a work-related accident in January 2000. In fact, the only medical treatment record that indicates that claimant had any low-back complaints, before his visit to Dr. Spencer on April 11, 2000, is Dr. Spencer's medical treatment record of November 11, 1999, before the alleged January 2000 incident.

Medical evidence in a workers compensation case is not essential to establish the existence and nature of a claimant's injury.<sup>1</sup> But in this case, the Appeals Board finds the absence of low-back symptoms for approximately a two-month period after the alleged work-related accident, plus no history of the accident contained in the medical records, casts serious doubt on whether claimant's current need for medical treatment for his low-back condition is related to his employment with respondent.

The Appeals Board, therefore, concludes, at this point in the proceedings, claimant has failed to prove that his need for medical treatment for his low-back condition is related to his employment with the respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bryce D. Benedict's June 1, 2000, preliminary hearing Order Denying Compensation should be, and it is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2000.

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BOARD MEMBER

c: Mark W. Works, Topeka, KS  
Derek J. Shafer, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup>See Tovar v. IBP, Inc., 15 Kan. App. 2d. 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).